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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN JACOB WILLIAM DINSMORE,

Defendant and Appellant.

A138986

(Solano County
Super. Ct. No. FCR296080)

Following a plea of no contest to unlawful possession of a firearm, unlawful possession of a controlled substance, and two prior prison term allegations, defendant was sentenced to four years eight months in state prison. Defendant has filed a timely appeal from the judgment of conviction challenging the denial of a motion to suppress evidence under Penal Code section 1538.5. As required under *People v. Kelly* (2006) 40 Cal.4th 106, 124, we affirmatively note counsel for defendant has filed a *Wende* brief (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)) raising no arguable issues, counsel apprised defendant of his right to file a supplemental brief, and defendant did not file such a brief. Upon review of the record for potential error, we conclude no arguable issues are presented for review and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On September 13, 2012, at approximately 1:30 p.m., Deputy Randy Pratt of the Solano County Sheriff's Department contacted Tina Herrera. Pratt testified Herrera told him she lived in the same residence defendant lived in with his parents, and after she had served defendant with a restraining order and eviction papers earlier that day, he left the

residence. When defendant later returned to the residence, Herrera advised Pratt she had seen defendant open the hood of the U-haul pickup he was driving, remove something from his waistband, place it under the hood, close it, and enter the house to “gather some things.” Upon leaving the residence, defendant again opened the hood, took something from the “engine compartment,” placed it in his waistband, and left the residence.

Herrera told Pratt she believed the item defendant removed from under the hood was a firearm, although she could not actually identify the object, but she knew defendant carried a firearm on his person. She described defendant as a White male with short hair.

At some point, Pratt was given defendant’s date of birth, and shown the paperwork Herrera had served on defendant which had identifying information. When Pratt’s shift ended at 7:00 p.m., he contacted the oncoming shift to provide information that defendant was a felon who “may be running around with a firearm in his possession.” Previously, Pratt had also passed along this information to his supervisor and dispatch, after which dispatch placed it on a briefing log.

On the same date, Michelle Perez, a realtor, arrived at 1461 Rockville Road to show the property. When she noticed there was no lockbox, she called the listing agent to find out where she could locate it. The listing agent informed Perez there was no lockbox and the house had been vandalized. As Perez spoke with the listing agent, her client opened the front door. Perez advised her client to shut the door and leave the property immediately.

Zack Powell, the listing agent, testified the property was vacant and no one had permission to live there. A few days earlier, on September 10, Powell had received a phone call from another realtor who wanted to show the property. This realtor informed Powell the lockbox had been sawed off. When Powell arrived at the property, she found just the hook of the lockbox on the door handle; the lockbox containing the key to the house was missing. She reported the theft to the police. On September 13, Powell responded to the property after receiving a call around 7:00 p.m. from “another agent” that there was no lockbox at the property. At the property, Powell had contact with

Deputy Wallace and Sergeant West. Sergeant West returned the key to the property to Powell.

Prior to starting his shift on September 13, 2012, Deputy Ryan Wallace obtained information from the briefing log that defendant was the subject of a restraining order and was “known to carry a firearm under the hood of his U-haul pickup truck.” On that same date, Wallace was dispatched to 1461 Rockville Road. When Wallace arrived, he observed a U-haul pickup truck in the driveway. He and Sergeant West opened the front door and saw defendant and a female standing at the base of the stairs. After defendant and the female came out of the residence, defendant identified himself. Defendant told Wallace he had the key to the house, which he turned over to Wallace. Wallace immediately conducted a pat search but did not feel a weapon. He then entered the house to conduct a protective sweep. He discovered in the area where he had lost sight of defendant and the female as they had exited the house “a little pouch on the ground” with a “meth. pipe sticking out of it, glass tubes with bulbs on the end . . . one sticking out.” To Wallace, the house appeared to have been ransacked because items were strewn about and all the cabinets and inside doors were open.

When Wallace conducted the initial pat search, he felt a plastic bag in defendant’s pocket, but without manipulating the bag, he could not determine the contents and did not continue because at that time, he was only “conducting a pat search” presumably for weapons. Once Wallace discovered the methamphetamine pipe inside the house, however, he searched defendant again because “[k]nowing where there [are] methamphetamine pipes, most often there is methamphetamine.” This time, Wallace found a small green Zip-Loc style plastic bag with clear crystalline substance he recognized as methamphetamine.

Thereafter, Sergeant West popped the hood of the U-haul truck under which he observed a “do-rag type of thing, handkerchief” with an object in it near the battery area. Inside the handkerchief, West found a loaded revolver handgun. Defendant admitted the truck belonged to him.

When Powell arrived at the property, she indicated she wanted the vehicle removed. And although the handgun had been located under the hood before Powell's arrival, once the methamphetamine was located on defendant, Wallace testified defendant was handcuffed and "in effect . . . under arrest." According to Wallace after an arrest has been made, it is the sheriff's department policy to tow a vehicle, and once impounded to do an inventory search including under the hood. As part of the inventory, a CHP 180 form is filled out by checking boxes to verify if certain designated items such as the alternator, battery, and ignition key are present. To check for the battery and alternator, the hood must be opened.

On September 17, 2012, a complaint was filed charging defendant with unlawfully concealing a weapon in a vehicle (Pen. Code, § 25400, subd. (a)(1); count 1), unlawfully possessing a firearm (Pen. Code, § 29800, subd. (a)(1); count 2), unlawfully possessing a controlled substance (methamphetamine) (Health & Saf. Code, § 11377, subd. (a); count 3), and receiving stolen property (Pen. Code, § 496, subd. (a); count 4). It was also alleged defendant had served four prior prison terms and failed to remain free for five years pursuant to Penal Code section 667.5, subdivision (b).

Defendant filed a motion to suppress evidence which was heard in conjunction with the preliminary hearing on October 15, 2012. The motion to suppress was denied and defendant was held to answer. An information was filed on October 16, 2012, reiterating the earlier charges and allegations. Defendant subsequently filed a motion to set aside the information pursuant to Penal Code section 995 and therein renewed the earlier suppression motion. The trial court denied the motion finding once the real estate agent arrived at the property and the vehicle was going to be towed, under the doctrine of inevitable discovery, the handgun would have been discovered during the inventory search of the vehicle. An amended information was subsequently filed correcting the date of one of the prior prison terms, but otherwise identical to the original information.

On April 24, 2013, defendant pleaded no contest to unlawful possession of a firearm, unlawful possession of a controlled substance (counts 2 and 3), and two prior

prison term allegations. The remaining counts and prior prison term allegations were dismissed on the prosecutor's motion.

At sentencing, the court denied probation and imposed an aggregate sentence of four years eight months, comprised of the midterm sentence of two years for count 2, a consecutive eight-month sentence for count 3, and one year each for the two prior prison term enhancements with presentence custody credits of 502 days.

DISCUSSION

Following a defendant's entry of a guilty plea, he is limited to raising "(1) search and seizures issues for which an appeal is provided under [Penal Code] section 1538.5, subdivision (m); and (2) issues regarding proceedings held subsequent to the plea for the purpose of determining the degree of the crime and the penalty to be imposed. (*People v. Jones* (1995) 10 Cal.4th 1102, 1106; [citations].)" (*People v. Panizzon* (1996) 13 Cal.4th 68, 74–75.) Here, we note as a term of the negotiated plea agreement defendant waived his right to appeal any claimed error when he signed and initialed his waiver of constitutional rights form. There is some confusion, however, whether he waived his right to appeal the denial of his motion to suppress evidence based on the trial court's statement during the plea colloquy that the suppression issue "would be preserved." Considering the court's statement and in light of the obligation of independent review imposed by *Wende, supra*, 25 Cal.3d 436, we have reviewed the entire record including the motion to suppress, and find no irregularities.

The trial court properly denied defendant's motion to suppress because even if the sheriff's deputies did not have probable cause to conduct a warrantless search under the hood of the U-haul truck, pursuant to the doctrine of inevitable discovery, the seizure of the handgun was justified. Under this doctrine, although evidence obtained through illegal actions is inadmissible as " "fruit of the poisonous tree," ' ' " where the court finds the challenged evidence would have been eventually secured through legal means regardless of the improper conduct, the inevitable discovery exception allows the evidence to be admitted. (*People v. Superior Court (Tunch)* (1978) 80 Cal.App.3d 665, 673.)

Here the record indicates the sheriff's department had a policy requiring the deputies to tow and inventory the contents of vehicles, including under the hood of the vehicle for the battery and alternator. Because law enforcement has a legitimate interest in taking an inventory of the contents of a vehicle, inventory searches constitute an exception to the search warrant requirement of the Fourth Amendment. (*People v. Smith* (2002) 95 Cal.App.4th 283, 294.) It was thus inevitable the handgun would have been discovered under the truck's hood during the course of the legitimate inventory search.

By entering a plea of no contest, defendant admitted the sufficiency of the evidence establishing the crimes, and therefore is not entitled to review of any issue going to the question of guilt. (*People v. Hunter* (2002) 100 Cal.App.4th 37, 42.) Without a certificate of probable cause, defendant cannot contest the validity of the plea. (Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304(b)(2).) Defendant did not obtain a certificate of probable cause.

Nothing in the punishment imposed upon defendant warrants further review.

Defendant was ably represented by counsel throughout the proceedings.

The judgment is affirmed.

Margulies, Acting P.J.

We concur:

Dondero, J.

Banke, J.